

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

**FILED**  
NOV 08 2016  
Clerk, U.S. Courts  
District Of Montana  
Missoula Division

DANIEL CAGEY,

Plaintiff,

vs.

C/O MARTHALER, LEROY  
KIRKEGARD, MIKE BATISTA, and  
ROBERT LISHMAN,

Defendants.

CV 16-17-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on October 4, 2016, recommending dismissal of Defendants Kirkegard, Batista, and Lishman, and dismissal of Plaintiff Daniel Cagey's ("Cagey") claims under the American Indian Religious Freedom Act. The parties failed to timely object to the Findings and Recommendations, and so waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a

mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that Defendants Kirkegard, Batista, and Lishman should be dismissed from this case because they were not named in the Amended Complaint. (See Doc. 8.) Further, the Court finds no clear error in Judge Johnston’s recommendation that Cagey’s claims under the American Indian Religious Freedom Act should also be dismissed. As discussed by Judge Johnston, this law is merely a policy statement of the United States government and does not create a separate cause of action. *United States v. Mitchell*, 502 F.3d 931, 949 (9th Cir. 2007).

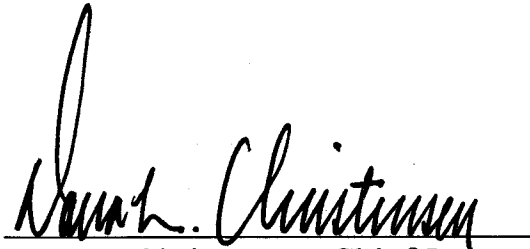
Accordingly, there being no clear error in Judge Johnston’s Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston’s Findings and Recommendations (Doc. 9) are ADOPTED IN FULL.

(2) Plaintiff Daniel Cagey’s claims under the American Indian Religious Freedom Act are DISMISSED.

(3) Defendants Kirkegard, Batista, and Lishman are DISMISSED.

Dated this 8<sup>th</sup> day of November, 2016

  
Dana L. Christensen, Chief Judge  
United States District Court